

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JOHN KALINEC,

Plaintiff,

v.

**ALLSTATE VEHICLE AND
PROPERTY INSURANCE COMPANY,**

Defendant.

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CIVIL ACTION NO. _____

**DEFENDANT ALLSTATE VEHICLE AND PROPERTY INSURANCE COMPANY'S
NOTICE OF REMOVAL**

TO THE HONORABLE COURT:

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Allstate Vehicle and Property Insurance Company in Cause No. 16-DCV-235406, pending in the 434th Judicial District Court of Fort Bend County, Texas, files this Notice of Removal from that court to the United States District Court for the Southern District of Texas, Houston Division, on the basis of diversity of citizenship and amount in controversy and respectfully shows:

**I.
FACTUAL BACKGROUND**

1.1 On or about September 13, 2016, Plaintiff filed Plaintiff's Original Petition in the matter styled *John Kalinec v. Allstate Vehicle and Property Insurance Company*, Cause No. 16-DCV-235406, pending in the 434th Judicial District Court of Fort Bend County, Texas, in which Plaintiff made a claim for damages to his home under a homeowner's insurance policy with Allstate Vehicle and Property Insurance Company.

1.2 Plaintiff served Defendant Allstate Vehicle and Property Insurance Company (“Allstate”) with Plaintiff’s Original Petition and process on September 28, 2016, by certified mail on its registered agent, CT Corporation System.

1.3 Simultaneously with the filing of this notice of removal, attached hereto as Exhibit “A” is the Index of Matters Being Filed. A copy of the Fort Bend County District Clerk’s file for this case is attached as Exhibit “B” which includes true and correct copies of all executed process, pleadings and orders, and a copy of the docket sheet. Attached hereto as Exhibit “C” is the Designation of Counsel.

II.

BASIS FOR REMOVAL

2.1 Defendant files this notice of removal within 30 days of receiving Plaintiff’s Original Petition. *See* 28 U.S.C. §1446(b). This Notice of Removal is being filed within one year of the commencement of this action. *See id.*

2.2 Removal is proper based upon diversity of citizenship under 28 U.S.C. §§ 1332(a)(1), 1441(a), and 1446.

A. THE PARTIES ARE OF DIVERSE CITIZENSHIP.

2.3 Plaintiff is, and was at the time the lawsuit was filed, a natural person and a resident of Fort Bend County in the State of Texas and thus, is a citizen of Texas. *See* Plaintiff’s Original Petition, ¶ 2. On information and belief, Plaintiff intends to continue residing in Texas and is thus domiciled in Texas. *See Hollinger v. Home State Mut. Ins. Co.*, 654 F.3d 564, 571 (5th Cir. 2011) (evidence of a person’s place of residence is prima facie proof of his state of domicile, which presumptively continues unless rebutted with sufficient evidence of change).

2.4 Defendant Allstate Vehicle and Property Insurance Company is an Illinois corporation with its principal place of business in Illinois and is a citizen of the State of Illinois for diversity purposes, and therefore, complete diversity exists.

B. THE AMOUNT IN CONTROVERSY EXCEEDS THE JURISDICTIONAL REQUIREMENTS FOR SUBJECT MATTER JURISDICTION.

2.5 In determining the amount in controversy, the court may consider “policy limits... penalties, statutory damages, and punitive damages.”¹ *St. Paul Reinsurance Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998); *see Ray v. State Farm Lloyds*, No. CIV.A.3:98-CV-1288-G, 1999 WL 151667, at * 2-3 (N.D. Tex. Mar. 10, 1999) (finding a sufficient amount in controversy in plaintiff’s case against their insurance company for breach of contract, fraud, negligence, gross negligence, bad faith, violations of the Texas Insurance Code, violations of the Texas Deceptive Trade Practices Act, and mental anguish); *Fairmont Travel, Inc. v. George S. May Int’l Co.*, 75 F. Supp.2d 666, 668 (S.D. Tex. 1999) (considering DTPA claims and the potential for recovery of punitive damages for the amount in controversy determination); *Chittick v. Farmers Ins. Exch.*, 844 F. Supp. 1153, 1155 (S.D. Tex. 1994) (finding a sufficient amount in controversy after considering the nature of the claims, the types of damages sought and the presumed net worth of the defendant in a claim brought by the insureds against their insurance company for actual and punitive damages arising from a claim they made for roof damages).

2.6 This is a civil action in which the amount in controversy exceeds \$75,000.00. Plaintiff alleges that Defendant is liable under a residential insurance policy because Plaintiff made a claim under that policy and Defendant wrongfully adjusted and denied Plaintiff’s claim.

2.7 Plaintiff seeks damages for mental anguish, court costs and attorney’s fees. *See* Plaintiff’s Original Petition, ¶ 43. Plaintiff seeks three times actual damages. *See* Plaintiff’s

¹ Plaintiff’s policy limits exceed \$75,000 and satisfy the jurisdictional amount.

Original Petition, ¶ 43. Plaintiff seeks attorney's fees.² *See* Plaintiff's Original Petition, ¶ 42. Plaintiff seeks 18% interest. *See* Plaintiff's Original Petition, ¶ 44. Plaintiff seeks such compensatory damages, exemplary damages and damages for emotional stress. *See* Plaintiff's Original Petition, ¶ 45. Plaintiff seeks to be awarded attorneys' fees for trial and any appeal of this case. *See* Plaintiff's Original Petition, ¶ 46. As such, Plaintiff's claim for compensatory, treble and exemplary damages, attorney's fees, penalties, and interest greatly exceeds \$75,000.00.

2.8 Although one sentence in Plaintiff's Original Petition alleges that Plaintiff seeks "monetary relief of \$75,000.00" or less in damages (*see* Plaintiff's Original Petition, ¶ 47), this allegation conflicts with the other demands and allegations set forth above and does not eliminate damages over \$75,000.00 from controversy in this case. Plaintiff seeks statutory penalties, treble damages, exemplary and punitive damages, pre-judgment interest and post-judgment interest as provided by law, attorneys' fees, costs of this suit, and "such other and further relief to which Plaintiff may be justly entitled." *See* Plaintiff's Original Petition, §X.

III.

THE REMOVAL IS PROCEDURALLY CORRECT

3.1 Defendant Allstate was served with Plaintiff's Original Petition and process on September 28, 2016. This notice of removal is filed within the 30-day time period required by 28 U.S.C. § 1446(b).

3.2 Venue is proper in this District and Division under 28 U.S.C. §1446(a) because this District and Division include the county in which the state action has been pending and

² Regardless of the amount of actual damages sought, claims for attorney's fees through trial in a case of this nature can be significant. *See State Farm Lloyd's v. Hanson*, No. 14-15-0093-CV (Tex. App. Houston [14th Dist.] June 30, 2016).

because a substantial part of the events giving rise to Plaintiff's claims allegedly occurred in this District and Division.

3.3 Pursuant to 28 U.S.C. §1446(a), all pleadings, process, orders, and all other filings in the state court action are attached to this Notice.

3.4 Pursuant to 28 U.S.C. §1446(d), promptly after Defendant files this Notice, written notice of the filing will be given to Plaintiff, the adverse party.

3.5 Pursuant to 28 U.S.C. §1446(d), a true and correct copy of this Notice of Removal will be filed with the Clerk of the Fort Bend County District Court, promptly after Defendant files this Notice.

IV. **CONCLUSION**

4.1 Based upon the foregoing, the exhibits submitted in support of this Removal and other documents filed contemporaneously with this Notice of Removal and fully incorporated herein by reference, Defendant Allstate Vehicle and Property Insurance Company hereby removes this case to this Court for trial and determination.

Respectfully submitted,

/s/ Vanessa A. Rosa

Vanessa A. Rosa
State Bar No. 24081769
Attorney-in-Charge
Southern District No. 2218868
vrosa@thompsoncoe.com

Roger D. Higgins
State Bar No. 09601500, IL 6182756
Of Counsel
Southern District No. 33282
rhiggins@thompsoncoe.com

THOMPSON, COE, COUSINS & IRONS, L.L.P.
700 North Pearl Street, 25th Floor
Dallas, Texas 75201
Telephone: (214) 871-8200
Fax: (214) 871-8209

ATTORNEYS FOR DEFENDANT
ALLSTATE VEHICLE AND PROPERTY
INSURANCE COMPANY

CERTIFICATE OF SERVICE

This is to certify that on October 28, 2016, a copy of this document was served to all Counsel of Record via electronic notice and/or certified mail, return receipt requested to:

Robert C. Lane
chip.lane@lanelaw.com
Jack Kitchen
jack.kitchen@lanelaw.com
THE LANE LAW FIRM
6200 Savoy Drive, Suite 1150
Houston, Texas 77036
Tel: (713) 595-8200
Fax: (713) 595-8201

/s/ Vanessa A. Rosa

Vanessa A. Rosa